United Nations A/HRC/37/NGO/83

General Assembly

Distr.: General
7 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-01843(E)
1801843

Please recycle

NEPAL: Repeated tenure extensions of transitional justice bodies without much progress, has been frightening victims and national and international communities

The Asian Legal Resource Centre (ALRC) wishes to draw the attention of the UN Human Rights Council (UNHRC) to Nepal's two transitional justice bodies. They are the Truth and Reconciliation Commission (TRC) and the Commission for the Investigation of Enforced Disappeared Persons (CIEDP). They were set up in 2015 to investigate conflict-era human rights violations. However, even after 3 years, they have not been able to make much progress and are mired in controversy.

Recently, the Government by ordinance extended their tenures by an additional year. But there is no word on amending the transitional justice legislations in line with the Supreme Court decision of 2015. Until that happens, it cannot be expected that much can be achieved.
Before being extended for over a year, the two transitional justice bodies were seeking political commitment before requesting tenure extensions from the Government. It seems that the TRC and the CIEDP have finally decided to put some pressure on the political parties. They need to amend the flawed legal mandate governing the Commissions and better align legislation with recommendations made by the Supreme Court. This would be a welcoming gesture.

But there are also many issues to be addressed before the transitional bodies become truly functional, as they have not done much more than to collect over 60,000 complaints. They have not been able to close even one case they registered within this period. It mostly speaks to the lack of political will and support from the Government. Among many other factors, current legislation allows the transitional justice bodies to recommend amnesty for serious human rights violations and abuses. In order for the transitional bodies to be effective and victim friendly, the amnesty provision must be removed.

In the last three years, political meddling was visible in the CIEDP. It focused more on legality than justice. This is illustrated by one of its decisions. It sent 400 complaints to the TRC jurisdiction, out of more than 3,000 that it collected. They cited the victims as not 'missing' but 'dead' on the basis of the paperwork. This only demonstrates their irresponsibility, and political motives.

On the other hand, the Commissions attributed their underperformance to lack of relevant Laws. In reality, they could have accomplished much more even in the absence of existing laws. The existing Act has not prevented them from seeking the truth, identifying perpetrators or recommending actions to prosecute the individuals who committed heinous crimes. These Commissions could have used the past three years to create an environment of reconciliation and propose relief packages for victims.

Though extensions have been made repeatedly, much cannot be expected from these Commissions established under faulty Acts. There is no doubt that the transitional justice bodies have been set up to both satisfy the political parties and whitewash their wicked crimes committed during the conflict period. Victims do not believe that it will deliver justice to them.

The TRC and CIEDP had not included the victims in the process. So, they feel abandoned, neglected and cheated. Crimes against humanity, murder, rape and enforced disappearance are serious crimes under International Law, and amnesty is not allowed in such cases. The International Community must not give their support if the laws are not amended in line with the verdict of the Supreme Court.

With continuous extensions but without any meaningful progress, the national and international communities, including the civil society and victims, have doubts. They fear that the transitional justice bodies will never address the human rights violations committed during the conflict period, and bring the process to a logical conclusion. Rather, the international community has already sidelined themselves from the process.

The ALRC respectfully requests the HRC to urge the Government of Nepal to oversee that the transitional justice process is not limited to internal jurisdiction, and is a matter of international concern. Nepal cannot avoid interventions from global humanitarian organisations if it does not conclude the process in a justifiable manner by satisfying the victims. The victims and the international community are closely watching the process.